

XII. Federal Habeas Relief Is Not Warranted Regarding Carpenter's Claim That The Court Should Not Consider Any Of His Foregoing Claims Procedurally Barred Because He Has Established His Actual Innocence under *Schlup* And Thus, A Miscarriage Of Justice Would Result If The Court Declines To Review The Merits Of His Procedurally Defaulted Claims. (Claim XII).

The Director has addressed this assertion previously in Part I.A.4.b, *supra*. It is not cognizable in federal habeas proceedings as a freestanding claim, and as argued in Part I.A.4.b, *supra*, has no merit. The Court should deny relief in all things.

CONCLUSION

For all of the foregoing reasons, the Director respectfully requests that to the extent Carpenter asks this Court to hold an evidentiary hearing, authorize DNA testing, or stay these proceedings so that he may return to state court, the Court deny the request with prejudice. The Director further asks the Court to deny federal habeas corpus relief as to all of Carpenter's claims, dismiss his third amended federal habeas petition with prejudice, and deny him a certificate of appealability regarding any of the claims he raises therein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2012, I electronically filed the foregoing pleading with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a "Notice of Electronic Filing" to the following attorney of record, who consented in writing to accept this Notice as service of this document by electronic means:

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